



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      ERP

### Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on July 24, 2021 seeking an order that the landlord make repairs for health or safety reasons. This is an expedited hearing. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 23, 2021. In the conference call hearing I informed the parties that this dispute is an expedited process. I explained the hearing process and provided both parties the opportunity to ask questions.

In the hearing, the tenant stated they had not received documents prepared as evidence from the landlord. They had asked for certain documents from the landlord in regard to the tenancy; however, the tenant here stated that the landlord refused to provide these documents. On my assessment of these individual pieces that appeared in the landlord’s submitted evidence, I determined that this disclosure was not relevant to this issue of emergency repairs. This material is therefore excluded from my consideration and receives no review or analysis in the decision below. I ensured that each participant was aware that their oral testimony was evidence, and each party affirmed an oath stating they pledged to provide the truth in their testimony on these matters.

At the outset of the hearing, the landlord confirmed they received the prepared evidence of the tenant, via registered mail. On this basis, the hearing proceeded.

### Preliminary Matter

In the hearing the tenant stated they wished to amend the Application by removing the other individual they named as tenant when they initially applied. This is based on the relationship between the parties. The landlord advised that this other tenant provided

notice to the landlord that they will end their tenancy and vacate the rental unit by September 1.

Because both the landlord and the tenant confirmed there was another tenant involved with this tenancy, with the landlord stating plainly that this other tenant had signed the original tenancy agreement, I address this decision to all parties to the agreement. This includes the other Applicant tenant who was not present at the hearing.

The tenant provided a document entitled Loss of Quiet Enjoyment, dated July 24, 2021. I did not determine whether this document was disclosed as part of the tenant's evidence for this hearing. In that letter, the tenant sets out that s. 28 of the *Act* applies to the immediate situation. The tenant did not explicitly state they wanted to amend their Application at this hearing in line with the *Residential Tenancy Branch Rules of Procedure*, in particular Rule 10.7. With this being the case, I give this issue no consideration in this hearing.

The tenant provided one document for their evidence on August 23, 2021. This was the date of their hearing. Rule 10.2 states: "An applicant must submit all evidence that the applicant intends to rely on at the hearing with the Application for Dispute Resolution." I do not accept this evidence because on my cursory review it appears it was not submitted by the tenants when they made their Application on July 24, 2021. This is my use of Rule 3.17.

### Issue(s) to be Decided

Is the landlord obligated by s. 32 of the *Act* to make emergency repairs to the rental unit as requested by the tenant?

### Background and Evidence

I have reviewed all oral and written evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

In the hearing, the tenant described how they managed the basement unit at the rental property, with other residents in that unit being either "homestay" or Airbnb "guests".

The landlord and tenant confirmed that the basic information regarding the tenancy is set out in a tenancy agreement; however, neither party provided the agreement for this hearing. The basic details are the rent amount of \$2,800, with the tenancy starting on February 23, 2016. At the time of the hearing, this basement unit was vacant and the tenant present in the hearing stated they had never lived in this basement unit at the rental property.

The tenant here presented that the basement unit had “severe problems with the toilet.” On the Application, they state it is “perpetually clogged” with the “odor from the backed up sewage [making] the unit uninhabitable.” They stated the other tenant who was not present at the hearing bought hardware to deal with the issue, but they “could not communicate with the landlords.” They provided that they messaged to the landlord via text about the problem; however, the landlords “ignored it.” In their Application, the tenants stated that “The unit cannot be rented to guests as per the homestay business. . .”

Additionally, the tenant present in the hearing stated the range hood has no fan. This leaves a fire hazard present in the kitchen portion of the basement unit with the kitchen material being “all wooden.” The tenant did not present that they made a request for repair on this separate piece to the landlord.

In response to the need for repairs, the landlord stated that the other tenant who was not present was typically the one who took care of repairs on their own. This other tenant would “always say that they had it covered.” Further, no one had asked the landlords about these particular issues in the past.

### Analysis

The *Act* s. 32 sets out the landlord obligations for repairs to the rental unit. The “emergency repairs” are defined under s. 33 of the *Act*. This sets out that these are repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of residential property.

Based on what the tenant presented here, I am not satisfied that either of the issues is of an urgent nature. They presented that there are no tenants living in the rental unit as of the date of the hearing. There is insufficient evidence to show the toilet is in fact in need of repair, or that the oven range is non-functional and posing a risk to health or safety. The tenant did not describe specific instances of issues arising, nor did they

describe how the issue clearly affected health and safety. This use of the emergency repairs provision in the *Act* is reserved for urgent immediate situations affecting health and safety. Because of what the tenant described, I find there is no urgency to the situation.

Moreover, as per s. 33(3), there is no evidence presented by the tenant that they identified the problem to the landlord and made at least two attempts to contact the landlord by telephone. Without this evidence, I find it difficult to conclude the landlord has the obligation to make a repair on an urgent basis.

For these reasons, I dismiss the tenant's claim in its entirety, without leave to reapply.

### Conclusion

I dismiss the tenant's application for the landlord to make emergency repairs, without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 24, 2021

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Residential Tenancy Branch